

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$3,440.00 for dates of service 10/22/01 and extending through 10/25/01.
- b. The request was received on 01/25/01.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/07/02
 - b. HCFA(s)
 - c. TWCC 62 forms
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 02/28/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 03/05/02. The 14 day response from the insurance carrier was not received in the Division. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.
3. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:
 - a. "According to Rule 133.1 (8) Fair and reasonable reimbursement-Reimbursement that meets the standards set out in § 413.011. of the Texas Labor Code, and **the lesser of a health care provider's usual and customary charge**, or (A) the maximum allowable reimbursement, when one has been established an applicable Commission fee guideline. (B) the determination of a payment amount for medical treatment(s) and/or service(s) for which the Commission has established no maximum allowable reimbursement amount, or (C) a negotiated contract. Our usual and customary charge is \$200.00 per hour and there is not [sic] MAR for this code neither is there a contract therefore only (B) applies and we have enclosed several EOMB's to come to the determination that \$200.00 per hour is what we should be paid for these services."

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only dates of service eligible for review are those commencing on 10/22/01 and extending through 10/25/01.
2. The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT or Revenue CODE	BILLED	PAID	EOB Denial Code(s)	MARS (Maximum Allowable Reimbursement)	REFERENCE	RATIONALE:
10/22/01 10/23/01 10/24/01 10/25/01	97799-CP	\$1,500.00 \$1,500.00 \$1,500.00 \$1,500.00	\$640.00 \$640.00 \$640.00 \$640.00	M M M M	DOP DOP DOP DOP	TWCC Sec. 413.011 (d) 133.304 (i)(1- 4)	<p>Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Section 413.011 (d) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines." The provider has submitted reimbursement data. The provider has submitted several EOBs from this carrier, which indicate the provider has been reimbursed 80% of the billed amount.</p> <p>Due to the fact that there is no current fee guideline, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has not submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that it meets the requirements of Rule 133.304. The provider has submitted EOBs from this carrier in an effort to show a consistent application of the reimbursement methodology by the carrier. Regardless of the carrier's lack of methodology or consistent application of its methodology or a timely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. A review of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence for review, the Requestor has not established entitlement to additional reimbursement.</p>
Totals		\$6,000.00	\$2,560.00				The Requestor is not entitled to additional reimbursement.

MDR: M4-02-1836-01

The above Findings and Decision are hereby issued this 06th day of June 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.